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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 United States of America,
13 Plaintiffs,
14 vs.
15 David Allen Harbour,
16 Defendant.
17

CR-19-00898-PHX-DLR (DMF)

**UNITED STATES'
RESPONSE TO DEFENDANTS'
REQUEST TO DETERMINE THE
FURTHER ADMISSIBILITY OF
OPERATION CHOKEPOINT**

18 The Court has requested the United States respond to Defendant's arguments that
19 he will testify about Operation Chokepoint and how it led to the collapse of DNA
20 Investments, LLC (DNA), and that his testimony will provide circumstantial evidence
21 about the reason for DNA's failure. (Doc. 625.)

22 The problem with Defendant's argument is that he proposes to testify, not about the
23 effect of Operation Chokepoint on his own business, but on the alleged effect of Operation
24 Chokepoint on Joel Tucker's business: KSQ Management. DNA's business did not involve
25 payday lending. DNA was established to raise money for other businesses. Defendant
26 introduced wealthy individuals to Joel Tucker, the principal of KSQ Management, and then
27 would "step away." (Doc. 211 at 38.) In 2015, Defendant testified about all these issues in
28 a deposition taken by the Federal Trade Commission. (Ex. 211.)

1 In that deposition, Defendant stated that DNA was “formed for the purpose of
2 raising capital in various deals.” (Ex. 211 at 28.) DNA raised money for KSQ Management
3 (KSQ), which is owned by Joel Tucker. (Ex. 211 at 29.) Defendant didn’t know KSQ’s
4 business:

5 Q: Can you tell me about KSQ?

6 A: What would you like to know?

7 Q: What is its purpose?

8 A: I do not know.

9 Q: Okay. You raised money for a company and you don’t
10 know what the company did with the money?

11 A: You are correct.

12 (Ex. 211 at 29-30.)

13 Defendant described his role with KSQ as someone who introduced wealthy
14 individuals to Joel Tucker and then stepped away:

15 So I looked – my role was, Joel, I want to introduce you to these wealthy
16 guys. It’s their decision they [sic] want to give you money or not. You have
17 to sell it. I’m not going to sell on your behalf – I’m not going – I’m not going
18 to sit here and try to get into your life in KSQ and what it is you do or don’t
19 do. Here they are. They can invest with you and if you can sell them . . . I
20 wasn’t in the meeting. It’s in my building. I wasn’t there. I didn’t attend.

21 . . .

22 So once I would make those introductions . . . I would step away. So it was
23 never that I needed, to your question, to know what it is Joel was truly doing
24 or not doing because [the investors] met with him individually.

25 (Ex. 211 at 38-39.)

26 Defendant is unable to testify about payday lending, much less Operation
27 Chokepoint’s impact on any payday lending businesses, because he has repeatedly testified
28 under oath that he has no personal knowledge on the subject. Joel Tucker operated KSQ.

While *Mr. Tucker* may have personal knowledge about how Operation Chokepoint
affected *his* payday lending business, Defendant does not. As repeatedly represented by
Defendant’s counsel throughout trial, the basis of Defendant’s proffered testimony will be
that Defendant was present at a meeting with Mr. Tucker, at which Mr. Tucker allegedly
discussed Operation Chokepoint. Thus, the only basis for Defendant’s purported

1 knowledge on the subject is this inadmissible hearsay. No causal link can be drawn from
2 Defendant's testimony because he possesses no first-hand knowledge of the issues, as
3 required under Fed. R. Evid. 701.

4 In fact, the only testimony offered in this trial based on personal knowledge of
5 KSQ's business is that of Lisa Berges, who testified that she reviewed KSQ's financial
6 documents, including bank statements, and concluded that KSQ failed because Tucker
7 spent business funds on his personal expenses and on large kickbacks to Defendant instead
8 of putting those funds "on the street" in the form of payday loans.

9 The law cited in Defendant's motion is not applicable because he does not intend to
10 testify regarding his personal knowledge of *his own* business, but his hearsay-based
11 knowledge of *another person's* business. This testimony is not admissible and will not
12 assist the jury in understanding how Dr. Manning's testimony is relevant to the charges
13 against Defendant. If there was a decrease in income from KSQ at any point, Defendant's
14 financial expert may testify to that. Dr. Manning's testimony remains irrelevant and untied
15 to any admissible evidence.

16 Respectfully submitted this 16th day of February, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this same date, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing a copy to the following CM/ECF registrant:

Stephen M Dichter, *Attorney for Defendant*

s/Daniel Parke
U.S. Attorney's Office